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same before participating in the estate, beneficiaries indebted to the estate must pay the debts before they can participate under the will.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 1532; Dec. Dig. § 646.* 13 Va.-W. Va. Enc. Dig. 847.]

Appeal from Circuit Court, Scott County.

Suit by D. E. Carter and another, executors of the will of W. P. Hickam, deceased, against I. F. Taylor and another, for the construction of the will. From a decree construing the will, defendants appeal. Affirmed.

W. S. Cox, of Gate City, and Richmond, *Chambers & Bowlin,* of Chattanooga, Tenn., for appellants.

S. H. Bond, of Gate City, for appellees.

VIRGINIA IRON, COAL & COKE CO. *v.* ASBURY'S ADM'R.

Sept. 9, 1915.

[86 S. E. 148.]

1. Master and Servant (§ 229*)—Injury to Servant—Liability—Obligation of Servant.—An employee must exercise care to avoid injuries to himself, and must provide for his own safety from such dangers as are known to him, or discernible by ordinary care, and must take ordinary care to learn the dangers.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 674, 683; Dec. Dig. § 229.* 9 Va.-W. Va. Enc. Dig. 692.]

2. Master and Servant (§ 241*)—Injury to Servant—Contributory Negligence.—A miner of long experience contracted to remove pillars of coal from rooms of a mine after the main body of the coal had been removed. He knew that the work was more dangerous than the usual removal of coal when pillars were left standing. He worked on a pillar for two or three days, when a piece of slate, about 15 feet in length, 11 feet in width, and 3 feet in thickness, fell on him. There was a slip on the edge that was apparent to any one. The roof was sounded, and found not to be solid. There was but one prop under the slate, and this was toward one end of it. This condition was seen by others, and the miner in the exercise of reasonable care would have known it. Held, that he was guilty of contributory negligence for failing to exercise reasonable care for his own protection.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 757; Dec. Dig. § 241.* 9 Va.-W. Va. Enc. Dig. 702.]

3. Master and Servant (§ 228*)—Statutory Regulations—Construction.—The purpose of Mining Act (Acts 1912, c. 178), requiring each

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

miner to properly prop his place to make the same secure, and declaring that no miner shall work in any working place unless he has props, is to promote the safety of miners, but does not relieve them from exercising a reasonable degree of care for their own safety, and they must make inspections to discover when props are needed, then order them, and when furnished place them properly, so as to make the working place secure; and a miner may not remain in his working place until the danger is so great and immediate that no person of ordinary prudence would remain, but he must leave as soon as his place becomes insecure from lack of props, and a violation by a miner of the statutory duty precludes a recovery for his death or injury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 670, 671; Dec. Dig. § 228.* 9 Va.-W. Va. Enc. Dig. 705.]

4. Master and Servant (§ 243*)—Injury to Servant—Contributory Negligence.—A violation by an employee of a rule of the employer, promulgated for the protection of the employee, defeats a recovery by him for an injury sustained, when observance of the rule would have prevented the injury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 682, 759-775; Dec. Dig. § 243.* 9 Va.-W. Va. Enc. Dig. 686.]

5. Trial (§ 154*)—Evidence—Demurrer—Grounds—Sufficiency.—The grounds of demurrer to evidence, in an action for the death of a coal miner by slate falling on him, that the evidence does not show that the employer was guilty of negligence proximately causing the accident, that the evidence shows that decedent was guilty of contributory negligence, that he knew of the danger and assumed the risk, that the danger was open and obvious and ought to have been known to him, and that he violated the law in not staying out of the mine until he got props to make the working place safe, go to the merits of the case, and meet the purpose of the statute requiring the causes of demurrer to be stated.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 351, 353; Dec. Dig. § 154.* 4 Va.-W. Va. Enc. Dig. 519.]

Error to Circuit Court, Wise County.

Action by Smythe J. Ashbury's administrator against the Virginia Iron, Coal & Coke Company. There was a judgment for plaintiff, and defendant brings error. Reversed.

F. A. Groseclose, D. D. Hull, Jr., of Roanoke, *Bullitt & Chalkley*, of Big Stone Gap, and *Jackson & Henson*, of Roanoke, for plaintiff in error.

Wm. H. Werth, of Tazewell, and *E. M. Fulton*, of Wise, for defendant in error.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.